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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 NEMAN BROTHERS & ASSOCIATES,
17 INC., a California Corporation,
18 Plaintiff,
19 vs.
20 TRIXXI CLOTHING COMPANY, INC.,
21 individually and doing business as
22 “THREE PINK HEARTS,” a California
23 Corporation; BOSCOV’S
24 DEPARTMENT STORES, a Delaware
25 Limited Liability Company; KOHL’S
DEPARTMENT STORES, a Wisconsin
Corporation; J.C. PENNEY
CORPORATION, INC., a Delaware
Corporation; and DOES 1 through 10,
Defendants.

Case No.:

PLAINTIFF’S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

1 Plaintiff, NEMAN BROTHERS & ASSOCIATES, INC. (“NEMAN BROS.”),
2 a California Corporation, by and through its undersigned attorneys, hereby prays to
3 this honorable Court for relief based on the following:

4 **JURISDICTION AND VENUE**

5 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
6 *et seq.*

7 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
8 1338 (a) and (b).

9 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
10 1400(a) in that this is the judicial district in which a substantial part of the acts and
11 omissions giving rise to the claims occurred.

12 **PARTIES**

13 4. Plaintiff NEMAN BROS. & ASSOCIATES, INC. is a corporation
14 organized and existing under the laws of the State of California.

15 5. Plaintiff is informed and believes and thereon alleges that Defendant
16 TRIXXI CLOTHING COMPANY, INC., individually and doing business as
17 “THREE PINK HEARTS” (collectively, “TRIXXI”), is a corporation organized and
18 existing under the laws of the State of California, with its principal place of business
19 located at 6817 East Acco Street, Commerce, California, 90040, and is doing
20 business in and with the State of California.

21 6. Plaintiff is informed and believes and thereon alleges that Defendant
22 BOSCOV’S DEPARTMENT STORES (“BOSCOV’S”) is a limited liability
23 company organized and existing under the laws of the State of Delaware, and is
24 doing business in and with the State of California.

25 7. Plaintiff is informed and believes and thereon alleges that Defendant
26 KOHL’S DEPARTMENT STORES (“KOHL’S”) is a corporation organized and
27 existing under the laws of the state of Wisconsin, and is doing business in and with

1 the State of California.

2 8. Plaintiff is informed and believes and thereon alleges that J.C. PENNEY
3 CORPORATION, INC., (“JCP”), is a corporation organized and existing under the
4 laws of the State of Delaware with its principal place of business located in Waco,
5 Texas, and is doing business in and with the State of California.

6 9. Plaintiff is informed and believes and thereon alleges that Defendant DOES
7 1-4, inclusive, are manufacturers, and/or vendors (and/or agent or employee of
8 manufacturers or vendors) of garments to Defendant, which DOE Defendants have
9 manufactured and/or supplied and are manufacturing and/or supplying fabrics and
10 other product printed with Plaintiff’s copyrighted design (as hereinafter defined)
11 without Plaintiff’s knowledge or consent or have contributed to said infringement.
12 The true names, whether corporate, individual or otherwise of Defendants DOES 1-
13 4, inclusive, are presently unknown to Plaintiff, which therefore sues said
14 Defendants by such fictitious names and will seek leave to amend this complaint to
15 show their true names and capacities when same have been ascertained.

16 10. Defendants DOES 5 through 10, inclusive, are other parties not yet
17 identified who have infringed Plaintiff’s copyrights, have contributed to the
18 infringement of Plaintiff’s copyrights, or have engaged in one or more of the
19 wrongful practices alleged herein, including but not limited to retail stores and others
20 who have sold the garments at issue in this case. The true names, whether corporate,
21 individual or otherwise, of Defendants 5 through 10, inclusive, are presently
22 unknown to Plaintiff, which therefore sues said Defendants by such fictitious names,
23 and will seek leave to amend this Complaint to show their true names and capacities
24 when same have been ascertained.

25 11. Plaintiff is informed and believes and thereon alleges that at all times
26 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
27 manager, principal, alter-ego, and/or employee of the remaining Defendants and was

1 at all times acting within the scope of such agency, affiliation, alter-ego relationship
2 and/or employment; and actively participated in or subsequently ratified and
3 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of
4 all the facts and circumstances, including, but not limited to, full knowledge of each
5 and every violation of Plaintiff's rights and the damages to Plaintiff proximately
6 caused thereby.

7 **CLAIMS RELATED TO DESIGN NB161024**

8 12. Prior to the conduct complained of herein, Plaintiff composed an original
9 two-dimensional artwork for purposes of textile printing. Plaintiff allocated the
10 design the name NB161024 (hereinafter "Subject Design A").

11 13. Subject Design A is an original creation of Plaintiff and Plaintiff's design
12 team, and is, and at all relevant times, was owned exclusively by Plaintiff.

13 14. Plaintiff registered Subject Design A with the United States Copyright
14 Office.

15 15. On or about July 28, 2017, TRIXXI sampled Subject Design A from
16 Plaintiff.

17 16. Plaintiff is informed and believes and thereon alleges that, without
18 Plaintiff's authorization, TRIXXI, BOSCOV'S, and certain DOE Defendants
19 created, sold, manufactured, caused to be manufactured, and distributed garments
20 comprised of fabric featuring a design which is identical, or substantially similar, to
21 Subject Design A (hereinafter "Subject Product A") without Plaintiff's authorization.
22 Such Accused Product includes, but is not limited to, garments sold by BOSCOV'S
23 under Item No. 105521, and bearing the labels "TRIXXI" and "three pink hearts,"
24 Style No. 26R3643MH, and RN 106289, indicating it was manufactured by or for
25 TRIXXI.

26 17. A true and correct comparison of Subject Design A and an exemplar of the
27 Subject Product A is below:

1 2 3 4 5 6 7 8 9 10 11 12 13 14	Subject Design A: 	Subject Product A Exemplar: 
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16 **CLAIMS RELATED TO DESIGN NB161031**

17 18. Prior to the conduct complained of herein, Plaintiff composed an original
two-dimensional artwork for purposes of textile printing. Plaintiff allocated the
19 design the name NB163031 (hereinafter "Subject Design B").

20 19. The Subject Design B is an original creation of Plaintiff and Plaintiff's
design team, and is, and at all relevant times, was owned exclusively by Plaintiff.

21 20. Plaintiff registered Subject Design B with the United States Copyright
Office.

22 21. On or about October 9, 2017, TRIXXI sampled Subject Design B from
Plaintiff.

23 22. Plaintiff is informed and believes and thereon alleges that, without
Plaintiff's authorization, KOHLS, TRIXXI, and certain DOE Defendants created,

1 sold, manufactured, caused to be manufactured, and distributed garments comprised
2 of fabric featuring a design which is identical, or substantially similar, to Subject
3 Design B (hereinafter “Subject Product B”) without Plaintiff’s authorization. Such
4 Accused Product includes, but is not limited to, garments purchased at KOHL’S
5 under Style No. 26R3643MII and bearing the label “TRIXXI,” indicating it was
6 manufactured by or for TRIXXI.

7 23. A true and correct comparison of Subject Design B and an exemplar of the
8 Subject Product B is below:

Subject Design B:	Subject Product B Exemplar:
	

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25
26 ///
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28

CLAIMS RELATED TO DESIGN NB160307

24. Prior to the conduct complained of herein, Plaintiff composed an original
two-dimensional artwork for purposes of textile printing. Plaintiff allocated the
design the name NB160307 (hereinafter “Subject Design C”).

25. The Subject Design C is an original creation of Plaintiff and Plaintiff’s
design team, and is, and at all relevant times, was owned exclusively by Plaintiff.

26. Plaintiff registered Subject Design C with the United States Copyright
Office.

27. On or about January 16, 2017, TRIXXI sampled Subject Design C from
Plaintiff.

28. Plaintiff is informed and believes and thereon alleges that, without
Plaintiff’s authorization, JCP, TRIXXI, and certain DOE Defendants created, sold,
manufactured, caused to be manufactured, and distributed garments comprised of
fabric featuring a design which is identical, or substantially similar, to Subject
Design C (hereinafter “Subject Product C”) without Plaintiff’s authorization. Such
Accused Product includes, but is not limited to, garments purchased at JCP under
Style or SKU No. 221/1058 and bearing the label “TRIXXI,” indicating it was
manufactured by or for TRIXXI.

29. A true and correct comparison of Subject Design C and an exemplar of the
Subject Product C is below:

27 ///



FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Against All Defendants, and Each)

30. Plaintiff repeats, realleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

31. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, had access to Subject Design A and Subject Design B (collectively, “Subject Designs”), including, without limitation, through (a) access to Plaintiff’s showroom and/or design library; (b) access to illegally distributed copies of the Subject Designs by third-party vendors and/or DOE Defendants, including without limitation international and/or overseas converters and printing mills; (c) access to Plaintiff’s strike-offs and samples, and (d) garments manufactured and sold to the

1 public bearing fabric lawfully printed with the Subject Designs by Plaintiff for its
2 customers.

3 32. Plaintiff is informed and believes and thereon alleges that one or more of
4 the Defendants manufactures garments and/or is a garment vendor. Plaintiff is
5 further informed and believes and thereon alleges that said Defendant(s) has an
6 ongoing business relationship with Defendant retailers, and each of them, and
7 supplied garments to said retailers, which garments infringed the Subject Designs in
8 that said garments were composed of fabric which featured unauthorized print
9 design(s) that were identical or substantially similar to the Subject Designs, or were
10 an illegal derivation or modification thereof.

11 33. Plaintiff is informed and believes and thereon alleges that Defendants, and
12 each of them, infringed Plaintiff's copyrights by creating, making, and/or developing
13 directly infringing and/or derivative works from the Subject Designs and by
14 producing, distributing and/or selling garments which infringe the Subject Designs
15 through a nationwide network of retail stores, catalogues, and through on-line
16 websites.

17 34. Due to Defendants' acts of infringement, Plaintiff has suffered substantial
18 damages to its business in an amount to be established at trial.

19 35. Due to Defendants' acts of infringement, Plaintiff has suffered general and
20 special damages in an amount to be established at trial.

21 36. Due to Defendants' acts of copyright infringement as alleged herein,
22 Defendants, and each of them, have obtained direct and indirect profits they would
23 not otherwise have realized but for their infringement of the Subject Designs. As
24 such, Plaintiff is entitled to disgorgement of Defendant's profits directly and
25 indirectly attributable to Defendant's infringement of the Subject Designs in an
26 amount to be established at trial.

1 37. Plaintiff is informed and believes and thereon alleges that Defendants, and
2 each of them, have committed acts of copyright infringement, as alleged above,
3 which were willful, intentional and malicious, which further subjects Defendants,
4 and each of them, to liability for statutory damages under Section 504(c)(2) of the
5 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00)
6 per infringement. Within the time permitted by law, Plaintiff will make its election
7 between actual damages and statutory damages.

SECOND CLAIM FOR RELIEF

9 (For Vicarious and/or Contributory Copyright Infringement - Against All
10 Defendants)

11 38. Plaintiff repeats, realleges, and incorporates herein by reference as though
12 fully set forth, the allegations contained in the preceding paragraphs of this
13 Complaint.

14 39. Plaintiff is informed and believes and thereon alleges that Defendants
15 knowingly induced, participated in, aided and abetted in and profited from the illegal
16 reproduction and/or subsequent sales of garments featuring the Subject Designs as
17 alleged herein.

18 40. Plaintiff is informed and believes and thereon alleges that Defendants, and
19 each of them, are vicariously liable for the infringement alleged herein because they
20 had the right and ability to supervise the infringing conduct and because they had a
21 direct financial interest in the infringing conduct.

22 41. By reason of the Defendants', and each of their acts of contributory and
23 vicarious infringement as alleged above, Plaintiff has suffered and will continue to
24 suffer substantial damages to its business in an amount to be established at trial, as
25 well as additional general and special damages in an amount to be established at
26 trial.

1 42. Due to Defendants', and each of their acts of copyright infringement as
2 alleged herein, Defendants, and each of them, have obtained direct and indirect
3 profits they would not otherwise have realized but for their infringement of the
4 Subject Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits
5 directly and indirectly attributable to Defendants' infringement of the Subject
6 Design, in an amount to be established at trial.

7 43. Plaintiff is informed and believes and thereon alleges that Defendants, and
8 each of them, have committed acts of copyright infringement, as alleged above,
9 which were willful, intentional and malicious, which further subjects Defendants,
10 and each of them, to liability for statutory damages under Section 504(c)(2) of the
11 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00)
12 per infringement. Within the time permitted by law, Plaintiff will make its election
13 between actual damages and statutory damages.

PRAYER FOR RELIEF

15 | Wherefore, Plaintiff prays for judgment as follows:

Against All Defendants

With Respect to Each Claim for Relief

- 18 a. That Defendants, their agents and employees be enjoined from
19 infringing Plaintiff's copyrights in any manner, specifically those for the
20 Subject Designs;

21 b. That Plaintiff be awarded all profits of Defendants plus all losses of
22 Plaintiff, plus any other monetary advantage gained by the Defendants
23 through their infringement, the exact sum to be proven at the time of
24 trial, or, if elected before final judgment, statutory damages as available
25 under the Copyright Act, 17 U.S.C. § 505 et seq.;

26 c. That a trust be imposed over the revenues derived by Defendants, and
27 each of them, through the sales or distribution of the product at issue;

- 1 d. That Plaintiff be awarded its attorneys' fees as available under the
- 2 Copyright Act, 17 U.S.C. § 505 et seq.;
- 3 e. That Defendants, and each of them, account to Plaintiff for their profits
- 4 and any damages sustained by Plaintiff arising from the foregoing acts
- 5 of infringement;
- 6 f. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 7 g. That Plaintiff be awarded the costs of this action; and
- 8 h. That Plaintiff be awarded such further legal and equitable relief as the
- 9 Court deems proper.

10 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
11 38 and the 7th Amendment to the United States Constitution.

12
13 Respectfully submitted,

14
15 Dated: August 29, 2018

16 By: /s/ Scott Alan Burroughs
17 Scott Alan Burroughs, Esq.
18 Trevor W. Barrett, Esq.
19 DONIGER / BURROUGHS
20 Attorneys for Plaintiff